IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 501 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KODINAR TALUKA CO.OP. BANKING UNION LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 501 of 1993

MR SHIRISH JOSHI for Petitioner No. 1

MR BHATE, AGP for Respondent No. 1,2,3

MR HM BHAGAT for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the

respondent No.2 - Deputy Collector, Stamp Duty Valuation, Bhavnagar dated 3.11.1992 by which the petitioner is directed to pay the amount of Rs.1495/- towards deficit stamp duty and further amount of Rs.1495/- by way of penalty with regard to the document in question.

#. One Laxmanbhai Rambhai, member of the petitioner Banking Union Limited and staff members of the petitioenr union had taken loan from the said cooperative bank and the documents of title were submitted with the petitioner bank which was on Rs.100/- stamp paper. They were submitted before the Sub-Registrar, Kodinar in the year 1983-1984. The dispute is with regard to the staff members of the petitioner association who had taken a loan from the petitioner cooperative bank whose names have been mentioned at Annexure-A to the petition who had submitted documents of title during the period between 1983 to 1986. It appears that the Deputy Collector, Stamp Duty Valuation, Bhavnagar was of the opinion that the document which is presented before the Sub-Registrar, Kodinar can be considered to be mortgage deed, and, therefoer, aforesaid persons were required to pay more stamp duty, and, therefore, proceedings were initiated under Section 32-A of the Bombay Stamp Act and the first notice came to be issued in the month of June, 1982. Ultimately, the order came to be passed on 3.11.1992 directing the aforesaid staff members of the petitioner bank to pay deficit stamp duty which comes to Rs.1500/and odd ranging from Rs.805/- to Rs.2035/-. The members whose names have been shown at Annexure-A to the petition being aggreived by and dissatisfied with the said order, had preferred the present special civil application under Article 226/227 of the Constitution of India.

#. It is true that the petitioner had not preferred the revision application before the revisional authority, i.e. State Government. However, in view of the fact that this petition is of 1993 and it is already admitted by this Court, it will not be proper at this stage to dismiss the same on the ground that alternative remedy is not exhausted, more particularly, in view of the fact that this Court has admitted the present petition.

#. So far as the merit of the petition is concerned, Mr.Baiju Joshi, learned advocate appearing on behalf of the petitioner, has submitted that exercise of the powers by respondent No.2 itself is illegal and arbitrary, as, the documents were submitted in the year 1983 to 1987 and the powers came to be exercised by respondent No.2 for the first time in the month of June 1992 which could not have been exercised by respondent No.2 after unreasonable

period. He has relied upon the judgment of the Full Bench of this Court in the case of Gorwa Vibhag Cooperative Housing Society Vs. State of Gujarat, reported in 1992(1) GLR 654, unreported judgment of the learned Single Judge of this Court in the case of Ambuja Metal Industries Private Limited Vs. State of Gujarat rendered in Special Civil Application No.654 of 2000 with Special Civil Application No.2794 of 2001, unreported judgment of the learned Single Judge of this Court in the case of Kumarpal rendered in Special Civil Application No.4434 of 2003 and another unreported judgment of the learned Sinlge Judge of this Court in Special Civil Application No.1258 of 2003 in support of his submission that respondent No.2 should not have exercised the powers after unreasonable period of presenting the document and that exercise of the powers by respondent No.2 after unreasonable period itself was illegal and the order on the basis of that is nullity.

#. No affidavit-in-reply is filed on behalf of the respondents, i.e. no explanation whatsoever is given by the respondent authority justifying the delay in exercise of the powers after a period of 5 years. Mr.Bhate, learned AGP is not able to explain the delay in exercise of the powers.

#. Considering the judgement of the Full Bench in the case of Gorwa Vibhag Cooperative Housing Society (supra) and even subsequent to the Full Bench's judgment in the case of Shamjibhai Jadavji Variya Vs. Sub-Registrar, Vadodara, reported in 1996(3) GLR 783, in absence of any justification for delay in exercise of the powers, respondent No.2 could not have exercised the powers and initiated the proceedings almost after a period of 5 years. This Court in Special Civil Application Nos.654 of 2000, 12581 of 2003 and 4434 of 2003 has been pleased to quash and set aside the orders passed by the authority under the Bombay Stamps Act when the powers are exercised after a period of almost 3 to 4 years.

#. Considering the aforesaid three judgments as well as the judgment of the Full Bench of this court in the case of Gorwa Vibhag Cooperative Housing Society (supra), the impugned order passed by respondent no.2 dated 3.11.1992 cannot sustain and is required to be quashed and set aside. Accordingly, the order passed by the Deputy Collector, Stamp Duty Valuation, Bhavnagar dated 3.11.1992 bearing NO.Stamp/Stamp/921/93 is required to be quashed and set aside and accordingly it is quashed and set aside. Consequently, the recovery agaisnt the staff members of the petitioner association whose names have

been mentioned at Annexure-A to this petition is also quashed and set aside.

Rule is made absolute with no order as to costs.

(M.R.Shah,J)

(pathan)